IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 439 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

LILABEN BHIMJIBHAI BHARWAD

Appearance:

1. Special Civil Application No. 439 of 2001

MR RC PATHAK for Petitioners No. 1-2

MR AS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. R.C. Pathak for the petitioner and Mr. A.S. Supehia for the respondent workman.

Rule. Service of rule is waived by Mr. A.S. Supehia, the learned advocate appearing for the respondent workman. With the consent of the learned advocates for the parties and in the facts and circumstances of the case, the matter is taken up for final hearing today.

By way of this petition, the petitioner is challenging the judgment and award passed by the Labour Court, Junagadh in Reference (LCJ) No. 282 of 1993 dated 21.6.2000 whereby the labour court concerned has partly allowed the reference and has directed the petitioner to reinstate the workman in service with continuity of service and 40 per cent back wages for the intervening period from 20.2.1988.

During the course of hearing, learned advocate Mr. Pathak appearing for the petitioner has submitted that the labour court has committed error in awarding back wages from the date of alleged termination though admittedly the dispute was raised by the workman in the year 1993. According to him, since the dispute was raised belatedly by the workman, the labour court ought not to have granted the relief of back wages from the date of alleged termination till the date on which dispute was raised by the workman. As against that, learned advocate Mr. Supehia has submitted that as regards the period from the date of termination till the date on industrial dispute was raised by the workman, the Court may pass appropriate orders while confirming the rest of the award made by the labour court. In other words, he has submitted that rest of the award for reinstatement with continuity of service and 40 per cent of back wages from the date of raising of industrial dispute should be confirmed by this court.

I have considered the submissions made by both the learned advocates. I have also considered the award made by the labour court. Considering the fact that the services of the respondent workman has been terminated by order dated 20th February, 1988 and for such termination dated 20th February, 1988, the workman has raised dispute for the first time in the year 1993 by raising industrial dispute which was referred for adjudication by the concerned Assistant Commissioner of Labour, Junagadh by order dated 23rd February, 1993 and, therefore, naturally, the respondent workman has remained silent and has belatedly raised industrial dispute and, therefore, to that extent, the award made by the labour court is required to be modified. In the award, the labour court

has made observations that the respondent has completed continuous service from 1982 to 1988 wherein the petitioner has produced details of presence of the workman. The labour court has considered that the respondent workman has worked for 296 days for the year 1982; 319 days for the year 1983; 266 days for the year 1984; 299 days for the year 1985; 358 days for the year 1986; 344 days in the year 1987 and 48 days in the year 1988. Such conclusions have been drawn by the labour court on the basis of the evidence produced before it and on the basis of these observations, the labour court has held that the workman has completed 240 days' continuous service. The labour court has found that while terminating the services of the workman, no notice or notice pay in lieu of notice or retrenchment compensation has been paid as required under section 25F of the Industrial Disputes Act, 1947. Therefore, considering the submissions made by the learned advocates for the parties, the award made by the labour court is required to be modified in so far as it relates to back wages for the period from the date of termination till he date of raising of an industrial dispute. As regards remaining part of the award, namely reinstatement in service with continuity of service and back wages from 23rd February, 1993 till the date of the award, no submissions have been made and, therefore, same does not require interference of this court.

Therefore, considering the submissions made by the learned advocates for the parties, the award made by the labour court, Junagadh in Reference (LCJ) No. 282 of 1993 dated 21.6.2000 is modified in so far as it relates to back wages part for the period from the date of termination till 23rd February, 1993. Accordingly, award dated 21st June, 2000 made by the labour court, Junagadh setting aside the order of termination dated 20th February, 1988 and directing the petitioner to reinstate the respondent workman in service with continuity of service is confirmed. As regards back wages, it is directed to the petitioner to pay 40 % back wages to the respondent workman with effect from 23rd February, 1993 till the date of the impugned award i.e. 21st June, 2000 with a clarification that from the date of the impugned award i.e. 21st June, 2000, the respondent workman is entitled to get full wages and the petitioner is required to pay regular full wages to the respondent workman. Accordingly, the award is modified to the above extent with a direction to the petitioner to reinstate the respondent workman within four weeks from the date of receipt of copy of this judgment and to pay 40 per cent back wages from 23.2.1993 till 21.6.2000 within eight

weeks from the date of receipt of copy of this judgment. The petitioner is further directed to pay full wages to the respondent workman from 21.6.2000 till the date of actual reinstatement of the workman in service. With aforesaid modification of the award, this petition is disposed of accordingly. Rule is made absolute in terms indicated hereinabove with no order as to costs.

8.1.2002. (H.K. Rathod,J.)

Vyas